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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re E.O. et al., Persons Coming  
Under the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.O.,

Defendant and Appellant.

B289601

(Los Angeles County  
Super. Ct. No. 18CCJP00267)

APPEAL from an order of the Superior Court of Los Angeles County, Martha Matthews, Judge. Affirmed in part and reversed in part.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Tracey F. Dodds, Principal Deputy County Counsel, for Plaintiff and Respondent.

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## INTRODUCTION

The juvenile court found that Father and Mother placed their children, E.O. and S.O., at substantial risk of serious harm because they knowingly allowed Robert S., a registered sex offender, to reside in the same house as their children.

Father appeals from the juvenile court's jurisdictional finding under Welfare and Institutions Code<sup>1</sup> section 300 and contends substantial evidence does not support the court's finding that he knew Robert S. was a registered sex offender. We agree and reverse the juvenile court's jurisdictional findings and order as to Father only. In all other respects, the order is affirmed.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *Investigation, Petition, and Detention*

#### 1. Background Information

Mother and Father were in a relationship from 2009 until 2014. They have two children: E.O., currently age seven, and S.O., currently age four. Although Mother and Father ended their relationship in 2014, they continued to reside together in the same house, but lived in separate quarters: Father lived upstairs while Mother and the children lived downstairs. Mother and the children shared a bedroom.<sup>2</sup>

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> Mother is not a party to this appeal.

Mother and Father shared their residence with a tenant, Gloria H.,<sup>3</sup> who had been renting a room in their residence for approximately two years. Mother and Father also shared their residence with Robert S., a handyman, who lived downstairs in a room adjacent to Mother's and the children's bedroom. All of the residents shared the living room and kitchen area.

On October 12, 2017<sup>4</sup>, the Los Angeles County Department of Children and Family Services (hereinafter DCFS) received a referral from mandated reporters at Kaiser Permanente that a patient, Robert S., was a registered sex offender residing in a home with two small children. Robert had informed the reporting party that he was married to Mother and indicated there were no restrictions in place with respect to his contact with children. DCFS initiated an investigation.

## 2. Robert S.'s History of Sexual Abuse

DCFS searched for information regarding Robert S. and discovered the following.

In 1990, Robert stalked and harassed a church female employee, including ejaculating into her coffee mug several times and placing semen or urine on her vehicle.<sup>5</sup>

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<sup>3</sup> The jurisdiction/disposition report identifies Gloria H. as "Gigi H." However, the record makes clear that the tenant's name is "Gloria H." and not "Gigi H."

<sup>4</sup> The detention report states October 13, 2017; the jurisdiction report states October 12, 2017.

<sup>5</sup> No charges were filed by the church female employee as the church assured her it would assist Robert in seeking help.

In October 1992, Robert's daughter from his first marriage, C.S., was detained from him on substantiated section 300, subdivision (d) sexual abuse allegations. During the juvenile court proceedings, a psychiatric evaluation of Robert described him as a "habitual sexual predator, with a high degree of severe psychological pathology" with escalating sexually deviant behavior. The psychiatric report described Robert's "long term sexual predation" of both women and children, which began with his admitted sexual molestation of his younger sister from the time she was age four or five until she was age 10 or 11. At the conclusion of the juvenile court proceedings, C.S. was found to have been "violently assaulted" by Robert. She was released to her mother, who obtained a three-year restraining order against Robert.

When the restraining order expired in June 1997, Robert contacted C.S. and molested her again, resulting in further section 300, subdivisions (d) and (c) substantiated allegations for severe sexual and emotional abuse. The juvenile court report included medical documents that Robert had sodomized C.S. and caused severe anal laceration. The juvenile court found true the allegation that Robert sexually molested C.S. and Robert's parental rights were terminated due to severe sexual and emotional abuse.

In December 2008, Robert was investigated by DCFS again. By then, Robert had two children from his second marriage, son R.S., then age eight, and daughter A.S., then age five. DCFS initiated its investigation following allegations that Robert, in the presence of his children, wife, and wife's mother, masturbated in

a public movie theater while seated next to his 15-year-old niece.<sup>6</sup> When interviewed, daughter A.S. stated she did not like to be home alone with her father, and no longer sat on her father's lap because she felt "uncomfortable." When asked if anyone had ever touched her private parts, A.S. responded, " 'My brother and my dad.' " The children were detained from Robert on substantiated section 300(b) and (d) allegations.

Robert taught third grade in the Los Angeles Unified School District. In his personnel file, there were multiple documented incidents of physical and/or emotionally abusive behavior towards children at the elementary schools where he worked, encompassing a span of 15 years. He admitted to taking and smelling the undergarments of a young female student while he was teaching. He also had forced a female student to urinate on herself in the classroom, causing the child severe emotional trauma.

### 3. DCFS's Investigation

Robert told DCFS that the allegations about his prior sexual history were untrue. He explained that he had to register as a sex offender after being accused by his former relatives of a crime he did not commit, that is, masturbating in the theater. Robert stated he was placed on probation for five years and was no longer supervised; he was required to complete his annual registration as a sex offender and, if he moved, was required to

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<sup>6</sup> Criminal charges of violating Penal Code sections 647.6 (annoying or molesting children) and 647(a) (lewd conduct in a public place) were filed against Robert in 2009; he was thereafter convicted of child annoyance.

register with the police department within 24 hours. He was under no other restrictions.

Robert explained that he met Mother three years ago via Craig's List, where he advertised his services as a handyman. He said they dated for three years and married in September 2017.

Robert reported that Mother knew he is a registered sex offender. She was aware of his history and that he was accused of a crime he did not commit; she also knew about his parental rights to C.S. being terminated based on allegations of severe sexual and emotional abuse. Robert reported that Father is "aware of the charges," but asked the social worker if he and Mother could meet at DCFS's office for any future interviews so as to "avoid drawing attention" to their home.

Mother confirmed she was aware of the charges that Robert masturbated in a theater, but believed he was wrongfully accused, as he had explained to her. She told DCFS she has spoken to her children about the difference between "good touch and bad touch," and that she never left the children alone with Robert. She also told DCFS she "do[es] not believe that [Robert] would ever hurt a child and feel[s] [her] children are safe with him.'"

Mother reported that Father knew of Robert's "sexual abuse history," but he did not know that she and Robert were married. Mother said she "did not inform anyone" that they married; she "want[ed] to keep that a secret."

DCFS informed Mother that a removal order would be requested unless Mother could ensure the children's safety by having Robert move out of the home. Two weeks later, Mother notified DCFS that Robert moved out.

On December 1, 2017, the DCFS social worker went to Mother's and Father's home to ensure Robert had moved out. At that time, Father was home and wanted to know "what was going on and why his family is being investigated by DCFS." The social worker shared that his family was brought to DCFS's attention after learning that Robert is residing in the home. Father stated, " 'He means nothing to us and can leave today and never have contact with my family again. He is just a handyman and does not need to live here.' " The social worker did not give Father more information and did not tell Father that Mother and Robert were married because Mother had asked her not to. The social worker stepped outside with Mother and told her she had to inform Father of the "current information" because he would be contacted later to make a statement for the court.

On December 5, 2017, Father called the social worker and said he was "just informed" by Robert that he married Mother, is expecting a child with Mother, and is a registered sex offender. Father said Mother and Robert resided under his roof under " 'false pretenses.' " He said they came to him as " 'roommates' " and Mother had introduced Robert as a " 'gay handyman' " she met at church, who is "in the process of getting a divorce due to his sexual orientation." Father said he thought Robert was a "weirdo"; however, Mother bullied Father into letting Robert stay in their spare room, as that would be the "good Christian" thing to do. Father expressed that he is "extremely concerned" for his children and wants them examined because Robert "ha[d] access" to his children, as he was responsible for taking the children to school and to dance class, unsupervised.

The next day, December 6, 2017, Father went to his children's schools and dance studio and informed the instructors that Robert was a registered sex offender and was not permitted to pick up or transport his children. Father also filed a police report and demanded to take the children to a doctor to have them examined.<sup>7</sup>

On December 11, 2017, Mother filed a request for domestic violence restraining order against Father in family law court, alleging Father abused her and the children. She alleged Father "caused a scene" at the children's ballet studio and became "verbally abusive" after learning of her marriage to Robert. Nowhere in her moving paperwork did she mention Robert's sexual abuse history, his status as registered sex offender, or the ongoing DCFS investigation.

During the restraining order proceedings, Mother claimed Father was "well aware of [Robert's] misdemeanor conviction for Child Annoyance" and "began lobbying false allegations . . . after we told him we were married." Father provided copies of text messages he sent Robert in December 2017 saying Mother "put my kids in danger knowingly and with eyes wide open. [¶] . . . [¶] As a mother she should be ashamed and if you touched my son you will pay dearly." Robert had replied, "I am sorry we did not tell you." Father asked Robert, "Why didn't you see the need to tell me you were convicted in 2010?"

On January 11, 2018, after a contested hearing, the family law court found Mother's allegations were "not supported by credible evidence" and "[Mother and] her now husband Robert . . . lack credibility in their testimony and their testimony was

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<sup>7</sup> Both E.O. and S.O. denied any sexual abuse.



generally not trustworthy”; the court further found that Mother’s and Robert’s “lack [of] credibility” and “false testimony was not innocent, but instead was calculated.” The court found “the testimony of [Father] was generally credible.” The court found that after Robert disclosed his registered sex offender status to Mother, she “kept that information to herself and did not disclose it to [Father].” The court further found that Mother “was motivated in collaboration with [Robert]” to obtain the restraining order against Father so that Father “would not be in the way of [Mother’s] relationship with [Robert]” and “would then have exclusive use of the family residence.”

After making these credibility findings, the family court denied Mother’s request for a restraining order. Father and Mother stipulated to shared legal and physical custody of their children and agreed neither parent would allow Robert to be within 100 yards of the children at any time.

#### 4. The Dependency Petition and Detention

On January 12, 2018, DCFS filed a dependency petition alleging E.O. and S.O. came within the jurisdiction of the juvenile court under section 300, subdivisions (b)(1) and (d), based on Mother having “established a detrimental and endangering home environment for the children” by allowing Robert “to reside in the children’s home and have unlimited access to the children” when Mother “knew that the male companion is a Registered Sex Offender.” DCFS alleged that Mother’s behavior “endanger[ed] the children’s physical health and safety, and place[d] the children at risk of serious physical harm, damage and sexual abuse.” DCFS recommended the court detain the children from Mother.

In its detention report dated January 16, 2018, DCFS opined: “The mother is naïve to the seriousness of her action of marrying a registered sex offender who has a long history of deviant sexual behaviors. [Robert] has been sexually predatory since a very young age, which started with the molestation of his younger sister, as he reported . . . and apparently continued through his adulthood. [Robert] has been able to convince his new wife that all the reports about his sexual deviant behavior are untrue therefore; due to mother’s poor judgment, lack of insight, residing after being advised by the department that she puts her children at risk, yet continued to disregard the safety of her children. Therefore, DCFS respectfully recommends that the children be detained from mother . . . and released to the father.”

At the detention hearing on January 16, 2018, the court found Robert “has a very long and very troubling history of substantiated sexual abuse,” which created a “very high risk” involving the children. After argument, the court found that “there are no reasonable means that the children can be protected without detention from [M]other at this time.” The court characterized Father as a non-offending parent and released the children to him.

*B. First Amended Petition, Jurisdiction, and Disposition*

After the detention hearing, Mother provided DCFS with copies of text messages to and from Father dated October 26, 2017, where Mother tells Father that “Mr. Bob [Robert] may have to leave” because he listed the children on a form he submitted to Kaiser. Father replied, “Why would he do such a stupid thing?” When asked, Father explained to DCFS that he was referring to why Robert would pee in a movie theater in public, as that was how Mother had explained the criminal charges to him. Father

repeated that he was never told Robert was a registered sex offender and had no idea about Robert's sexual abuse history, and said, " 'All that I knew . . . [is] that he relieved himself in public.' " (Italics omitted.)

When DCFS interviewed tenant Gloria H.,<sup>8</sup> she confirmed Robert had cared for the children without parental supervision, washed their clothes, transported the children to and from school, and bathed them with the bathroom door closed. She stated that she once heard Mother tell E.O., " 'Don't let Mr. Bob touch your thing.' " Gloria H. also stated Father was unaware that Robert was a registered sex offender until after DCFS got involved.

On February 14, 2018, DCFS filed a first amended petition, adding a new subdivision (b) allegation that Father "established a detrimental and endangering home environment" and failed to protect the children by allowing Robert to reside in the home and have "unlimited access" to the children when Father "knew Robert [S.] is a Registered Sex Offender."

The court held a contested evidentiary hearing as to jurisdiction. Mother and Father testified. Mother reiterated that she had told Father about Robert being a registered sex offender before Robert moved in. She also testified that Robert was reserved about his private life and would not give her his last name; she became romantic with Robert after about four months and at that point she "got" Robert to tell her his last name; she did not know his parental rights had been terminated; she did not know the extent of the accusations about his daughter C.S. and believed Robert had "won" that case; she believed he just left

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<sup>8</sup> At the hearing on Mother's request for a restraining order, the family law court had found "the tenant Gloria [H.] was very credible as to her observations."

his second marriage and family because he was having “issues”; she made sure Robert never bathed her children or was alone with them, except when he drove them to school.

Father repeated what he had previously told DCFS, as set out above. He reiterated that when Mother wanted Robert to move in, she had told him Robert was having problems with his ex-wife, was trying to get out of debt and needed a place to stay while he got his life together. She told Father to be a good Christian, stop being judgmental, and relax. Father and Robert were not friends; Father thought Robert was a “weirdo”; Robert was “always yelling”, “stomping”, and talking “loud and constantly.” Father also testified that when Robert invited him for dinner on December 4, 2017 and told him for the first time about his status as a registered sex offender, Robert said he had been accused of doing something “like 30 years ago or something like that.” That was why Father later texted Robert with the question, “Why didn’t you see the need to tell me you were convicted in 2010?”

Father testified that upon discovering Robert’s status, he not only went to the children’s schools immediately to make sure Robert’s access to the children was restricted, but also went to the children’s ballet studio, called the police, and demanded a medical examination of the children. He also wanted to take the children to be examined; Mother would not allow him to take them to a doctor. All he had previously known about Robert was that he had peed in a public theatre.

On the last day of the contested jurisdictional hearing, April 17, 2018, Mother waived her trial rights and the court found count b-1 of the petition true—that Mother allowed Robert to reside in the children’s home and have access to the children

when she knew he was a registered sex offender. On DCFS's motion, the court dismissed count d-1 as to Mother and count d-2 as to Father; thus, the only allegation left to be litigated was count b-2 regarding Father—whether Father endangered the children by allowing Robert to reside with them, knowing Robert was a registered sex offender.

The court made the following findings: “Okay. I’m going to sustain [b-2], as amended by interlineation. I’m going to strike the word, ‘unlimited access.’ There was testimony that both parents in their own ways did try to limit [Robert’s] access to the children. [¶] I’m also going to strike, ‘established for the child by the father,’ because there is – the evidence doesn’t show that father created this problem. He didn’t invite [Robert] to live there. However, he did allow this situation to continue. [¶] Contrary to Father’s counsel’s arguments, there were red flags early on. The DCFS investigation started in October. I do not find Father’s claim that he was unaware of [Robert’s] status or unaware that there is something that he ought to be looking into prior to December 4th. [¶] Father lived in the same house. He was aware of the layout of the house. He was aware that [Robert’s] bedroom was connected to that where the children were sleeping. A protective parent would be concerned about any unrelated adult male sleeping close to his very small children, especially a person with the characteristics acknowledged by – Father acknowledged on the stand that [Robert] was an odd person. [¶] I do believe there was evidence that he had reason to know or suspect that [Robert] might be a risk to his children prior to the date that Mother took action by requiring [Robert] to move out. So, I am going to sustain [b-2] as amended. [¶] At

this time I will make that jurisdictional finding. And then, we'll move on quickly, I hope, to disposition."

The court sustained count b-2, as amended by interlineation: Father "established a detrimental and endangering home environment for the children in that the [F]ather allowed the un-related male, Robert [S.] to reside in the children's home and have ~~unlimited~~ access to the children when the [F]ather knew Robert [S.] is a Registered Sex Offender. Such a detrimental and endangering home environment ~~established for the child by the [F]ather~~ endangers the children's physical health and safety, and places the children at risk of serious physical harm, damage and sexual abuse."

The court's finding rendered Father an offending parent. The court ordered the children released to both parents, with family maintenance services, and no contact between the children and Robert.

Father timely appealed.

## DISCUSSION

### A. *Father's Appeal is Justiciable.*

DCFS argues Father's appeal is not justiciable and should be dismissed because the juvenile court's findings against Mother support the court's jurisdiction over the minor children even if we reversed the jurisdictional findings as to Father. DCFS is correct in that a minor is a dependent of the court "if the actions of either parent bring [him or] her within one of the statutory definitions of a dependent." (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) "[A] jurisdictional finding good against one parent is good against both." (*Ibid.*; see *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979

[“As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate.”].)

We nevertheless retain discretion to hear the merits of a challenge to a juvenile court’s jurisdictional finding, even if overturning that finding will have no immediate effect on the juvenile court’s assertion of jurisdiction. (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1494–1495.) We will generally exercise that discretion “in three situations: (1) the [challenged] jurisdictional finding serves as the basis for dispositional orders that are also challenged on appeal; (2) the [challenged] findings could be prejudicial to the appellant or could impact the current or any future dependency proceedings; and (3) the [challenged] finding could have consequences for the appellant beyond jurisdiction.” (*In re A.R.* (2014) 228 Cal.App.4th 1146, 1150; accord *In re J.C.* (2014) 233 Cal.App.4th 1, 3–4; *In re Christopher M.* (2014) 228 Cal.App.4th 1310, 1316; *In re Drake M.* (2012) 211 Cal.App.4th 754, 762–763 (*Drake M.*).)

Where, as here, the outcome of the appeal could be “the difference between father’s being an ‘offending’ parent versus a ‘non-offending’ parent,” a finding that could result in far-reaching consequences with respect to ongoing and future dependency proceedings, we find it appropriate to exercise our discretion to consider the appeal on the merits. (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 763; *In re Quentin H.* (2014) 230 Cal.App.4th 608, 613.)

The juvenile court’s finding as to Father, specifically count b-2 of the first amended petition, as further amended by the court, rendered Father an offending parent. Such a finding (that Father failed to protect the children from the risk of serious physical harm or sexual abuse) has the potential, given his

children's young ages, to impact future dependency and/or family law proceedings. (See *In re M.W.* (2015) 238 Cal.App.4th 1444, 1452 [court adjudicates moot issues because allegation of failing to protect against sexual abuse is “pernicious” and could impact current and future dependency proceedings].)

We therefore find it appropriate to exercise our discretion to consider Father's jurisdictional challenge.

*B. DCFS Has Waived Section 355.1.*

DCFS raises, for the first time on appeal, section 355.1's burden shifting scheme and argues that section 355.1, subdivision (d)<sup>9</sup> applies in this case. DCFS argues because there are many sustained dependency court allegations of sexual abuse against Robert, the burden of proof shifted to Father to show Robert was not a risk to the children. We disagree.

DCFS's petition and amended petition do not cite section 355.1; they cite section 300 only. At the jurisdictional and dispositional hearing, DCFS neither raised section 355.1 nor argued that a rebuttable presumption arose under which the parents had the burden of production. Additionally, the court did not address section 355.1 during the dependency proceedings or make any threshold finding. (See *In re Sheila B.* (1993)

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<sup>9</sup> Section 355.1, subdivision (d) provides: “Where the court finds that either a parent . . . or any other person who resides with, or has the care or custody of, a minor who is currently the subject of the petition filed under Section 300 . . . has been found in a prior dependency hearing . . . to have committed an act of sexual abuse, . . . that finding shall be prima facie evidence in any proceeding that the subject minor is a person described by . . . Section 300 . . . constitut[ing] a presumption affecting the burden of producing evidence.”



19 Cal.App.4th 187, 200, fn. 7 [“Since the juvenile court never made the finding required by this section, this presumption never came into play.”].) We conclude DCFS has forfeited the matter by not giving Father sufficient notice of its reliance on section 355.1. (*In re A.S.* (2011) 202 Cal.App.4th 237, 243 [“When [DCFS] intends to rely on the statute to shift the burden of production to the parents . . . , it must do so in a clear-cut manner.”].)

C. *Substantial Evidence Does Not Support the Jurisdictional Findings Against Father.*

1. Standard of Review

In reviewing a challenge to the sufficiency of the evidence supporting jurisdictional findings, we “consider the entire record to determine whether substantial evidence supports the juvenile court’s findings.” (*In re T.V.* (2013) 217 Cal.App.4th 126, 133; accord, *In re I.J.* (2013) 56 Cal.4th 766, 773.) “Substantial evidence is evidence that is ‘reasonable, credible, and of solid value’; such that a reasonable trier of fact could make such findings.” (*In re Sheila B.*, *supra*, 19 Cal.App.4th at p. 199.) In making our determination whether substantial evidence supports the jurisdictional findings, “ ‘ “we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.] “We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.” ’ ” (*In re I.J.*, at p. 773; see *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 [“[w]eighing evidence, assessing credibility, and resolving

conflicts in evidence and in the inferences to be drawn from evidence are the domain of the trial court, not the reviewing court”].)

However, “substantial evidence ‘is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal.’” (*In re Yolanda L.* (2017) 7 Cal.App.5th 987, 992.) “ ‘ “Inferences may constitute substantial evidence, but they must be the product of logic and reason. Speculation or conjecture alone is not substantial evidence.” ’ ” (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 420; see *In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1093 [a “juvenile court’s conclusion ‘supported by little more than speculation’ [is] not based on substantial evidence”].)

Indeed, our Supreme Court recently stated: “Substantial evidence is a deferential standard, but it is not toothless.” *In re I.C.* (2018) 4 Cal.5th 869, 892.) The standard is not satisfied simply by pointing to “ ‘ “isolated evidence torn from the context of the whole record.” ’ ” (*Ibid.*) On appeal the appellant has the burden to show “ ‘there is no evidence of a sufficiently substantial nature to support the finding or order.’ ” (*In re Travis C.* (2017) 13 Cal.App.5th 1219, 1225.)

Here, Father contends the evidence is insufficient to support the juvenile court’s jurisdictional findings regarding his conduct under section 300, subdivision (b). We agree, and conclude the juvenile court’s jurisdictional findings were not supported by substantial evidence.

## 2. Application

Section 300, subdivision (b)(1), provides a basis for dependency jurisdiction if the child “has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child.” (§ 300, subd. (b)(1).) DCFS must establish and the juvenile court must thereafter find “by a preponderance of the evidence that allegations made pursuant to section 300 are true.” (*In re Matthew S.* (1996) 41 Cal.App.4th 1311,1318.) DCFS must demonstrate: “(1) neglectful conduct by the parent; (2) causation; and (3) ‘serious physical harm or illness’ or a ‘substantial risk’ of serious physical harm or illness.” (*In re Yolanda L., supra*, 7 Cal.App.5th at p. 993.)

To establish a defined risk of physical harm to the child, DCFS must show that the child is at risk of harm in the future; there must be “‘some reason beyond mere speculation to believe the alleged conduct will recur.’” (See *In re D.L.* (2018) 22 Cal.App.5th 1142, 1146.) “Although ‘the question under section 300 is whether circumstances *at the time of the [jurisdictional] hearing* subject the minor to the defined risk of harm’ [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court’s protection.” (*In re T.V., supra*, 217 Cal.App.4th at p. 133.)

The amended petition in this case alleged that Father established a detrimental and endangering home environment for the children because he allowed Robert to have access to the children when Father “knew Robert [S.] is a Registered Sex Offender.” However, the court never found that Father *knew* Robert was a sex offender, as alleged in the amended petition.

Instead, as set out above, the juvenile court found that Father “had reason to know or suspect” that Robert posed a substantial risk to his children. Evidence that a parent “should have known” is sufficient to uphold jurisdiction for a subdivision (d) count. (*In re I.J.*, *supra*, 56 Cal.4th at p. 780.) But here, the court had previously dismissed the (d) count against Father and it was not being adjudicated.

To assert jurisdiction over Father, the court had to make a finding that Father knew of Robert’s status as a registered sex offender. We are hampered somewhat in our analysis by the juvenile court’s failure to make credibility findings after the evidentiary hearing. It appears the court started to make a finding about what Father knew and when he knew it, but did not articulate the finding to its conclusion. It appears that the only evidence the juvenile court could have found to support its jurisdictional findings is Robert and Mother’s separate statements that they had advised Father of Robert’s “sexual history”; the fact that Robert, as the court noted, was an adult male sleeping in a room near the children’s and Mother’s bedroom; Father’s observation that Robert was “odd,” and the text messages between Mother and Father in October. Our review of the record taken as a whole leads us to conclude, however, the evidence in support of count b-2 as to Father is neither reasonable, credible, nor of solid value and therefore insufficient.

It is not reasonable to infer Father's knowledge of Robert's registered sex offender status from Robert's statements that he told Father of his "sexual history." The text messages<sup>10</sup> Father sent Robert on or about December 4, 2017 illustrate Father's visceral reaction and anger about Mother having put the children in danger by allowing Robert to live in the same house. Further, Robert's reply to Father's text message, saying, "I am sorry we did not tell you," is Robert's admission that they withheld information from Father. Robert's apology, coming on the heels of Father's expressed concern about Robert touching his son, suggests that Robert's apology refers to his failure to advise Father of his registered sex offender status, rather than his failure to advise Father about his marriage to Mother.

That Robert had not told Father the full truth about his registered sex offender status is further corroborated by Robert's initial interview with DCFS on October 18, 2017. He maintained to the investigating social worker that he had been accused of a crime he did not commit (and that his wife was aware that he did not commit the crime). He broadly stated that Father was "aware of the charges." Nevertheless, it is reasonable to infer that Robert was telling Father the same story he told Mother – that he had been wrongfully accused of a crime that he did not commit.

That Mother never told Father about Robert's status is substantiated by her initial remarks to the DCFS investigating social worker. When the social worker went to the family home

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<sup>10</sup> Father texted Robert and said, "She put my kids in danger knowingly and with eyes wide open. [¶] . . . [¶] As a mother she should be [a]shamed and if you touched my son you will pay dearly."

on December 1, 2017, the social worker did not provide Father with current information about DCFS's ongoing investigation and did not tell Father that Mother and Robert were married because Mother "asked [the social worker] not to." That Mother initially inveigled the DCFS social worker not to disclose to Father her secret marriage to Robert is consistent with Father's protestations that from the beginning Mother deceived him as well about Robert's registered sex offender status.

Additionally, when Mother was first interviewed in October 2017, she adamantly maintained that Robert had been wrongfully accused by his former relatives and that he was innocent of the charged crime. She said, again broadly, Father "knows about the sexual abuse history," yet it is likewise reasonable to infer that Mother, believing in Robert's innocence, conveyed the same false version of the facts to Father. As the DCFS social worker concluded after interviewing Mother: "[Robert] ha[d] been able to convince his new wife that all the reports about his sexual deviant behaviors are untrue . . . ."

Although the text message exchange between Mother and Father on October 26, 2017 indicates Father had *some* knowledge that Robert had "peed" in public in a movie theater 30 years ago, that knowledge is not substantial evidence that Father knew Robert's status as a registered sex offender.

Finally, although Mother claimed Father knew about Robert's history, the record reflects Mother was untruthful in some of her interviews with the social worker. She told the social worker that she never left the children alone with Robert, but Father and Gloria H. both testified (at different hearings) that Robert would take the children to school, care for them, and sometimes even bathe them unsupervised. Although the juvenile

court did not make a credibility finding as to Mother, the family law court found that Mother “lack[ed] credibility in [her] testimony,” her testimony “was generally not trustworthy,” and her “false testimony was not innocent, but instead was calculated.) The family law court made the same finding as to Robert’s testimony.

Mother’s and Robert’s broad statements that Father knew about Robert’s charges or his “sexual abuse history” were never made more specific by inquiry from the juvenile court or DCFS. The evidence suggests Father knew only the false versions that Mother and Robert were peddling him and the DCFS social worker. And their motive to lie about Father’s knowledge was spotted and commented on by the family law court which declined to issue a restraining order.

Reviewing the record as a whole, we find there is no reasonable and credible evidence of solid value that supports a finding that Father *knew* Robert was a registered sex offender. Apart from the broad statements by Robert and Mother as to what Father knew, the trial court appeared to conclude that because Father thought Robert was “odd” and he was an adult male sleeping in a bedroom near the children’s and Mother’s bedroom, Father should have been tipped off to the risk Robert posed and been more protective. However, these facts (any more than Father believing Robert was a “gay Christian”) are not any evidence supporting a finding of knowledge. And the actions Father took as soon as Robert revealed his status are those one would expect a parent to take immediately after discovering that a tenant residing in the home is a registered sex offender.

The whole picture painted by the record shows Mother and Robert so concerned about their own relationship that they each deceived Father about why Robert needed a place to stay, deceived Father about their own marriage, and deceived Father about the details of Robert's past criminal conviction. Not only did they spin their false versions of history to Father, but they both also attempted to do so with the DCFS social worker and the family law court, even suggesting to the DCFS social worker that she conceal facts after the investigation had commenced. That they did not tell Father about Robert's sex offender status falls right into the pattern. We find it is speculative that Father knew of Robert's registered sex offender status. While substantial evidence may be composed of inferences, inferences resulting from mere conjecture or speculation are not sufficient to constitute substantial evidence to support a trial court's factual finding on appeal. (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

Absent substantial evidence that Father knew Robert S. was a registered sex offender and therefore placed his children at risk, the juvenile court should not have sustained the (b) count in the first amended petition. We therefore strike the (b) count as to Father only. In all other respects, the juvenile court's order is affirmed.



### **DISPOSITION**

The juvenile court's jurisdictional findings and order as to court b-2 as to Father are reversed. In all other respects, the juvenile court's order is affirmed.

### **NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

STRATTON, J.

We concur:

BIGELOW, P. J.

RUBIN, J.\*

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\* Presiding Justice of the Court of Appeal, Second Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.